



# PUBLIC NOTICE

Federal Communications Commission  
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DA 15-1304  
Released: November 12, 2015

## CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON A PETITION FOR EXPEDITED CLARIFICATION OR DECLARATORY RULING FILED BY SUMOTEXT CORPORATION

CG Docket No. 02-278

**Comment Date: December 18, 2015**  
**Reply Comment Date: January 8, 2016**

With this Public Notice, we seek comment on a petition for expedited clarification or, in the alternative, declaratory ruling filed by SUMOTEXT Corporation (SUMOTEXT).<sup>1</sup> SUMOTEXT requests that the Commission confirm that when a company receives a text message from a consumer asking to receive more than one text message from the company, the disclosure requirements under the Commission's rules are satisfied by a combination of: (1) the company's call-to-action ("CTA") advertisement; (2) the content of the inbound text message request the consumer sent to the company; and (3) the content of the company's opt-in confirmation message reply to the consumer.<sup>2</sup>

In 2012, the Commission strengthened its rules implementing the Telephone Consumer Protection Act (TCPA)<sup>3</sup> to require prior express *written* consent for telemarketing calls, including text messages, that utilize an automatic telephone dialing system (autodialer) or an artificial or prerecorded voice.<sup>4</sup> Under those rules, "prior express written consent" was defined as including a clear and conspicuous disclosure that the person signing the agreement authorized the other party to deliver telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice and

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<sup>1</sup> Petition of SUMOTEXT Corporation For Expedited Clarification Or, In The Alternative, Declaratory Ruling, CG Docket No. 02-278, at 1 (filed Sept. 3, 2015) (*Petition*). SUMOTEXT states that it is "exclusively dedicated to hosting CSC [Common Short Codes] on behalf of brands and enterprises that include Starbucks, Humana, Southwest Airlines, and Guitar Center" and that it "provides the campaign management tools that control its customer's opt-in and opt-out consent records..." *Id.* at 2.

<sup>2</sup> *Id.* at 1.

<sup>3</sup> The TCPA is codified as 47 U.S.C. § 227. The Commission's implementing rules are codified as 47 C.F.R. § 64.1200.

<sup>4</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830 (2012) (*2012 TCPA Order*); 47 C.F.R. §§ 64.1200(a)(2), (f)(8).

that the person is not required to provide such consent as a condition of purchasing any property, goods, or services.<sup>5</sup>

In its petition, SUMOTEXT states that it provides marketing campaign management tools that control its enterprise customers' opt-in and opt-out consent records, while ensuring that its enterprise customers' responses to each consumer's request for text messages<sup>6</sup> remain compliant with the requirements of the wireless carriers who provision, test, certify, and audit "common short codes" on their networks consistent with the TCPA.<sup>7</sup> SUMOTEXT states that "the Commission should grant [its] petition to simply ensure that businesses will have a clear means to prove, through tangible electronic records, that all of the terms, conditions, and disclosures associated with a consumer's prior express written consent to receive marketing messages under the TCPA were actually provided to the consumer who requested the content."<sup>8</sup>

We seek comment on these and any other issues raised in the *Petition*.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

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<sup>5</sup> 47 C.F.R. § 64.1200(f)(8)(i).

<sup>6</sup> According to SUMOTEXT, it appears that consumers send a text message, "JOIN," in response to an enterprise or business's Call to Action (CTA) advertisement displaying a CSC for consumers to respond to opt-in to a recurring text message program. See *Petition*, 2, 5-6. SUMOTEXT states that a CTA is an "advertising display that informs consumers how to request mobile content by first initiating a text message to a common short code..." *Id.* at 1 n. 2.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 8.

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The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>9</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

**FOR FURTHER INFORMATION CONTACT:** Christina Clearwater, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-1893; [Christina.Clearwater@fcc.gov](mailto:Christina.Clearwater@fcc.gov).

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<sup>9</sup> 47 C.F.R. §§ 1.1200 *et seq.*